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ABSTRACT

Due process in school is an educational process for teaching the students that they are valued, that authority exists, and they they belong in the social unit. Historically, due process emerged as a way of guaranteeing rights and the privileges of governmental protection to a wider range of people in English and American institutions. The restrictions that educators cite concerning due process are almost universally rooted in local and state policy, not in federal court decisions. Due process requires far less than good principals require of themselves. Due process is based upon trust in one another and in rational processes and is seen as the best preventative for serious misbehavior. Advantages and disadvantages found in discipline codes are listed along with the characteristics of effective, well-disciplined, high-achieving schools. (MLF)

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Due Process Prevents Educators' Doing Only What They Should Not Do

William W. Wayson

We must have disciplined institutions if we are to have disciplined citizens. The foundations of a free society rest upon a social contract which specifies that social institutions are responsible for providing services to everyone. In return, individuals exercise responsible citizenship and adhere to basic norms governing life within the community. If institutions break their side of the social contract, citizens lose faith in government and its agencies. With that faith gone, society waivers between disruption and police power.

When asked what the greatest purpose for schooling should be, Horace Mann named self-discipline.[1] The greatest contribution any educator can make to the nation is a self-disciplined citizen who knows what needs doing and has the skill and the will to do it for as long as necessary.

Discipline problems in a school are not a disruption of teaching; they call for the highest levels of teaching skill. James Hymes says that disciplining is the slow, tedious, day-by-day process of teaching people the sense of doing right.[2]

Discipline must be taught in the circumstance in which the disciplined behavior is required. If we kept a roomful of people in a room with nothing to do, as we do when we put students in study halls, they would soon create discipline problems. We would have *taught* them to be disruptive by the way in which we treated them and by the circumstances in which we put them. Similarly, and unintendedly, we often *teach* students to behave disruptively.

No school needs to be disruptive. That statement represents experiences as principal of two schools, both newly desegregated, and twelve years' work with hundreds of teachers in courses and work-

1. H. Mann, *Ninth Annual Report* (1845) quoted in The Republic and the School: Horace Mann on the Education of Free Man 57-59 (L. Cremin ed. 1957).
2. J. Hymes, Behavior and Misbehavior: A Teacher's Guide to Action (Prentice-Hall 1955).

shops on school discipline as well as direct interventions with many schools, some considered the "worst" in their districts. There is probably no school that cannot be turned around if one has the will, the time and resources for doing so.

The necessary resources are freedom and incentive more than fiscal or physical (though many schools are designed to maximize disruptions and could benefit from reorganization and new enrollment and assignment practices that might cost more). My class on the principalship recently drove all Thursday night, visited schools in St. Louis on Friday, spent some time with the school staff on Friday night and on Saturday morning. The biggest surprise for my graduate students (all practicing teachers and administrators) was that teachers would work on Friday night and Saturday morning by their own choice. Those teachers worked in a middle school in which 96% of the children received free lunch; yet, their school was well disciplined, orderly, and productive. Ninety-plus percent of the students were above grade level norms on achievement tests in reading and 85% above in mathematics. Children were not paddled, nor were they unduly mistreated. We visited three elementary schools with the same characteristics. Staff members in all four schools were filled with the vitality and enthusiasm that comes from being on a winning team that does a difficult job well.[3]

Any school could be like that, but where do you start if your child or your neighborhood has one of those "under achieving schools" with which you are very dissatisfied? The most important single factor in a good school is the school principal, and that's probably the place to start. But you can't stop there; the school cannot improve without having a school faculty and a staff noncertified personnel who relate in productive ways with the students. After that you might concern yourself with other factors, but none of those factors would be a reduction in due process or close attention to preserving the rights of every individual in the school.[4]

Any disruption of the educational process is a problem and should not be condoned. A well disciplined and safe school is essential for teaching and for learning positive things. I have emphasized *positive* teachings and learnings because students always learn *something*

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3. The particular school mentioned here is Stowe Middle School, one of four schools in the original SHAL project initiated by Dr. Rufus Young and his staff in Area V of the St. Louis school system. We have seen other schools in other cities that exhibit the same high level of professional responsibility. None are coercive, punitive or exclusionary in their disciplinary policies.

4. See the discussion of student belongingness in W. Wayson, G. DeVoss, S. Kaeser, T. Lasley, & G. Pinnell, Handbook for Developing Schools With Good Discipline 37-41 (Phi Delta Kappa 1982).

from their experiences in schools; they often are taught quite opposite behaviors and values from what we think we are teaching them. For example, bells are a curriculum for teaching obedience to faceless authority. More bells ring in schools serving poor children than in schools serving wealthy children. The hidden curriculum for teaching poorer children to obey authority is probably stronger than the one teaching them how to exercise responsible freedom.

The discipline necessary for responsible freedom is learned, and it must be taught in the slow tedious manner that Hymes describes. It is not "enforced." It is not made by laws. Every high school principal has the same task that George Washington had when he became President of thirteen independent nations: to make them into one nation with loyalty, commitment to each other, and to a set of agreed-on operating procedures, or rules. Making that nation and creating a cohesive school cannot be legislated nor can it be forced; it must be taught. It is best taught when government upholds its end of the social contract and guarantees every citizen due process.

A few years ago, certain groups in this country began to attack due process. It was a surprise to me, because we had markedly improved an inner city school in Syracuse, New York, by using due process *as a curriculum* for teaching students the following things:

> that they belonged in the schools;
> that they were respected there;
> that they were safe there;
> that the school and its authority deserved their respect;
> that they had responsibilities to all others in the school;
> that they could learn processes for resolving conflicts rationally and to the satisfaction of both parties.[5]

From that perspective, attacks on due process are as surprising as an assertion that we could have stronger families without honesty, discussion and mutual attention to members' feelings. Due process, in school as in society, is an educational process, a lesson plan, for teaching the student that he or she is valued, for teaching that authority exists as much to protect his or her individual rights as to protect the rights of others, to foster his or her allegiance and loyalty to the school, and to teach respect for the American system, even when the student or his parents might have reason to feel the system has abandoned them.

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5. Wayson, *Organizing Urban Schools for Responsible Education*, School Discipline and Violence, Phi Delta Kappan, Feb. 1971, at 344-47.

A dissertation by Cynthia Kelly at the University of Wisconsin indicates that students do learn to respect themselves and the institution more in schools where due process is used than in schools where it is not.[6] Due process is a way of communicating that a person belongs in the social unit, that he or she will be respected as fully as they are expected to respect social agencies. People who are not fully respected are marginal in society; they are taught, by poor and unfair treatment, that they do not belong. Not to belong is to be marginal in the unit.

Marginality is directly related to delinquent social behavior. When Irish people in Boston could not get fair treatment in schools, they were barred from decent housing and could not get into bars in Boston, their crime rate was as high as we have found among any marginal group since that time. Marginality is directly related to delinquent behavior in families, communities, and society. That's why the British Bobby carries no gun; after 400 years of social struggle to democratize the institutions in England, the policeman is now seen as serving all of society. In the United States, our institutions are still serving the major purpose of those who forged the Constitution: to protect property and property owners.[7] Accordingly, many people are taught by neglect of their rights that they are marginal. Due process must be seen as a means for reducing marginality by extending social benefits to seal the social contract between the individual and society or its agency.

Taken at face value, the question whether due process ties the administrator's hands is totally absurd. Of course, due process ties the administrator's hands; that is precisely how English common law and American case law came to be what it is. The Magna Carta tied King John's hands and expanded freedom to a new group of people over whom he formerly held and exercised oppressive power. Historically, due process emerged as a way of guaranteeing rights and the privileges of governmental protection to a wider range of people in English and American institutions. Due process, of course, ties administrators' hands just as due process keeps a husband from beating his wife the way he used to beat her. Due process means that a worker has the right to hear and to be heard if brought up on certain charges and fired.

Taken in another light, the proposition is equally absurd. How can American schools and their personnel even think of denying due process as a fundamental foundation for living and learning to live in

6. C. Kelly, Due Process in the Schools: the View From Inside (unpublished doctoral dissertation, University of Wisconsin 1979).

7. A. Schlesinger, The Age of Jackson (1945).

a free nation. Would any teacher who says the government has tied his/her hands advocate giving up his or her *own* right to due process because it limits the school board's ability to dismiss teachers on the word of unnamed accusers with no right to know what the charges are?

To question whether due process ties administrators' hands is also absurd if one knows anything about disciplinary practices in schools today. Corporal punishment, suspensions and subterfuges for circumventing the law occur in numbers that would astound most citizens. Punishments are levied for reasons that are both laughable and shocking. It is a national disgrace. Rather than using government to support such schools we should launch investigations into professional malpractice and utilize resources to teach educators how to use more educational alternatives for teaching students who need instruction and guidance to become responsible and self-disciplined.

One Milwaukee school had a suspension rate in excess of 200% in 1979 because the principal felt he could not resist a clause in the union contract that was interpreted to say that the principal had to follow teachers' recommendations for punishment or fill out a long form. The principal had an astonishing number of referrals every day, and students were ejected from the school in huge numbers. In Cleveland in 1979, we chose Hart Junior High School as a setting in which to teach self-discipline in newly desegregated schools because it had reported suspension rates that were near 140%.[8]

Columbus, Ohio reported nearly 30,000 corporal punishments a few years ago. When one of the administrators was asked about it, he commented that the figure sounded like a lot, but if you considered that there were 70,000 students and that meant that there were only about four every ten minutes getting hit, that didn't seem so bad. I know a teacher who paddled a child in front of the class every day after the noon break to show the others what would happen if they did anything wrong. A school in Farmington, New Mexico had a principal in 1982 who had strapped (the method of punishment is to use a leather strap to administer swats) more than 300 children that year. He called in an innocent student and strapped him so that the news photographer could take a picture showing how that school kept discipline! Those are examples of excessively punitive actions

8. G. Pinnell, Final Report of a Project to Develop Self Discipline in Newly Desegregated Secondary Schools in Cleveland and Columbus, Ohio (submitted to U.S. Department of Education, Grant No. G008001350, Project No. 713005 Ohio State University Research Foundation, June 1981).

that could be found in every state and in many more school districts.[9]

Available figures indicate that about two million children a day are out of school for suspension, the major reason for which is *truancy*. Studies have shown that fewer than 2% of those suspensions are for any threat to life of property. Suspensions are being levied for such trivialities as wearing a hat in the hallway, rolling one's eyes at the teacher, sitting in the wrong seat at the cafeteria, and chewing gum![10] Irwin Hyman, director of the Center at Temple University that monitors corporal punishments and alternative ways to discipline, estimates that three million children a day are paddled in this country. Incidentally, teachers in Ohio have more rights than parents do; teachers are permitted by law to abuse children with a stick of wood; parents are not, and until 1985, the law prohibited even school boards from preventing them doing so.

It is absurd to assert that due process ties anyone's hand when those figures are so readily available.

Though we should never permit anyone to undermine anyone's rights for any excuse, the attack upon due process in schools would be slightly more palatable if the schools were as dangerous and crime-ridden as the propagandists would have us believe. But they are not. More schools in this country are well disciplined than are not. Terribly violent schools where there is lack of discipline are in the minority; indeed, they are difficult to find.

Understanding why anyone would attack due process and why anyone would exaggerate violence in the public schools[11] comes more easily if one understands the history of the Constitution and its relationship to the continual struggle for and against policies and practices designed to assure free universal education. Both the Constitution and struggle for public education are steeped in disagreements about the nature of people and the proper distribution of

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9. National Coalition of Advocates for Students, Barriers to Excellence: Our Children at Risk (1985).

10. Though the statistics are old, the general picture they present is still prevalent; so, we refer you to Children's Defense Fund, Children Out of School in America, (1974); and Children's Defense Fund, *School Suspensions: Are They Helping Children?* (1975). *See also* I. Hyman & J. Wise, Corporal Punishment In American Education (1979). For more recent studies, *see e.g.*, J. Harris & C. Bennett, Student Discipline: Legal, Empirical, and Educational Perspectives (1982). School Discipline and Violence, (President Reagan has consistently praised a school principal whose school has a 50% dropout rate for suspending 300 students during his first term in office).

11. For an example of the distortion of data see G. Bauer, *Disorder in Our Schools* (Report to President Reagan, Feb. 3, 1984). The same assertions have been printed (at the behest of Mr. Bauer) in the *Phi Delta Kappan* March 1985. *See* discussion by Scherer & Stimson, *Pseudo vs. Real Issues: Is School Violence a Serious Concern?* The School Administrator, March 1984 at 19-20, 55.

government services among those people.

We seldom teach that the Constitution is really two constitutions. First, it is a structural design establishing governmental processes to protect property. That design was developed by the Hamiltonians, the aristocrats, the property owners. The Hamiltonians, the Adamses, and the people who wrote that Constitution believed that government existed only for a few good people who knew how to run the world. If government gave them all the benefits, they would trickle some benefits down on the rest of society.

The second Constitution is the Bill of Rights, stirred up by Jefferson after he came back from Europe, where he was when the first constitution was written. The Bill of Rights was designed to protect individuals from excessive use of governmental power by the aristocratic property owners. The Jeffersonians believed in democratic government and processes in which greater numbers of individuals were entitled to governmental protections in return for which they would safeguard freedom.

After retiring from public life, John Adams and Thomas Jefferson frequently corresponded about that different philosophy, about what people were and what government was for.[12]

> Inequalities of mind and body are so established by God Almighty . . . that no art or policy can ever plane them down to a level. (Mr. Adams to Mr. Jefferson).

> [T]here is a natural aristocracy among men. The grounds are virtue and talents. . . . There is also an artificial aristocracy, founded on wealth and birth. . . . The natural aristocracy I consider as the most precious gift of nature, for the instruction, the trusts, and government of society . . . the best remedy is . . . to leave to the citizens the free election and separation of the aristoi from the pseudo-aristoi. . . . An insurrection has consequently begun, of science, talents, and courage, against rank and birth, which have fallen into contempt. (Mr. Jefferson to Mr. Adams).

> I only say that mankind have not yet discovered any remedy against irresistible corruption in elections to offices of great power and profit but by making them hereditary. (Adams to Jefferson).

Both sides have an internal logic, and their ongoing debate will continue throughout our country's history. We are now experiencing

12. Adams and Jefferson Letters (n.d.)

the 1985 version of it. It is impossible to *prove* one side or the other. Maybe there are a few geniuses born to rule the world, and maybe they are born only in certain superior groups or families. Both arguments have internal logic; both have truth; both ignore some truths; both have forefathers they can fall back on to prove their assertions; both have historical precedents; and both can claim to be for "the people" because each has a peculiar definition of who "the real people" are. Proponents of the two sides are unlikely to reach agreement. The underlying philosophy about the nature of people and the role of government is pre-eminent in determining what is accepted as truth, who is authoritative and what information they will accept.

The difference is not incidental to the debate over due process in schools. Historically, the Hamiltonians and their descendants, did not want public schools; the Jeffersonians did. The Hamiltonians wanted to spend public money only for minimal training for paupers who posed a threat to property rights in large cities; the Jeffersonian forces wanted every child to get the same education afforded the wealthy. The Hamiltonians wanted governmental agencies to exercise punitive and authoritarian methods to protect society from the lower animal natures of the poorer classes; the Jeffersonians advocated protections against those methods and favored greater faith in each person and more caring methods. The Hamiltonians believed people (other than themselves) to be lazy, untrustworthy, and in constant need of instruction and control from their betters; the Jeffersonians felt that basic good existed in human nature and that people could be depended upon, given all the facts, to make good decisions and to work for the common good in most instances. Almost all political (and educational) issues in American life center upon the debate between the two forces.[13]

Whether one feels that it is easier to govern by assuring, rather than manipulating ignorance and prejudice in the population or to involve an educated and informed population fully in the governing process, it appears indisputable that the ability to govern depends upon acceptance by those who are governed. To win that acceptance for any length of time, government must uphold its end of the social contract or must resort to tyrannical means of control.

Government at all levels must protect children or young adults, or adults for that matter, from abuse, unwarranted accusations and denial of their rights. Unless we attribute deity to school officials

13. For descriptions of the times and the debates, *see, supra* note 7, A. Schlesinger; L. Cremin, The Transformation of the School 8-20 (1964). *See also* S. Rothstein, The Power to Punish: A Social Inquiry into Coercion and Control in Urban Schools (1984).

(thereby depriving them of their essential human rights), we must admit that they often, under pressure, make mistakes. Like other human beings, they may lack tolerance, insight, knowledge or skill for making good judgments at all times. Whatever the cause for mistakes or misjudgments, government must see that people are protected from any of those weaknesses.

A pervasive need in our schools today is to evoke personal commitment and responsibility from all participants at all levels. All have a role to play and must play it well if our schools are truly to serve American citizens. Our schools need to stress personal responsibility on the part of every teacher to teach the students they have rather than to throw them out of school, to protect students' rights, and to ask for (and get) help if they do not know how to do any part of their job. Students must be taught to be personally responsible for coming to school, to clean up their own messes, to take part in their own learning. To teach that responsibility, we must treat them seriosly and give them responsible roles.

Just what does the law require school personnel to do to meet the requirements of due process? Schimmel, Lufler and others[14] have shown that the law requires, as the *Goss* decision states, "less than good principals require of themselves."[15] Good principals do hear the student's side of a case to make sure he/she knows what his/her rights are in that school and to assure that those rights will be met and that no injustice is done. The law requires far less than good principals require. Indeed, the law requires far less than you would want if you were accused of molesting a child in your school.

> Students . . . have a right to fair treatment, in school as in society: to be presumed innocent until proven guilty, with fair warning and fair hearing.[16]

Though it is less clearly established yet in law, professional ethics would dictate that they also have a right to be as fully educated as possible — whether or not they seem eager and willing — by people

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14. L. Fischer & D. Schimmel, The Rights of Students and Teachers 298-327 (1982); *also* D. Schimmel, *Discipline, Due Process and Religion in the Schools*, (xeroxed manuscript available from author); and D. Schimmel & R. Williams, *Does Due Process Interfere with School Discipline?*, School Discipline and Violence (manuscript prepared for Phi Delta Kappan). *See also* E. Hollingsworth, H. Lufler, & W. Clune III, School Discipline: Order and Autonomy (1984). A. Schlesinger, The Age of Jackson, (1945).

15. Goss v. Lopez, 419 U.S. 565 (1975).

16. Carter, Harris & Brown, *Student and Parent Rights: What Are Their Constitutional Guarantees?* NOLPE Sch. L.J. 45-60 (1976).

who exhibit the highest levels of civic and professional responsibility.

The restrictions that gall, and perhaps hamper educators are not laid down by courts anyway. When I push people who tell me that the law has tied their hands, the restrictions they cite almost universally are rooted in local and state policy, not in federal court decisions. Excessively legalistic and restrictive codes are adopted by local authorities, not prescribed by judicial mandate. Overreactive policies are promulgated by state or local officials or functionaries; they are not rooted in legal principles.

Competent administrators and teachers are concerned about rigid and legalistic discipline codes. I have been asking educators what they are willing to die for. They are not willing to die for much, just as German educators in 1938 were not. The question is always appropriate for educators in a free society, as anyone who has experienced anti-desegregation rallies or book censoring hysteria can attest. In Guatemala, in Chile, in El Salvador, in Brazil, in Iran and probably in other places teachers have been shot because they are teachers, and good teachers are always a threat to tyranny. At times when repression has control of government, good students are also threats. Teachers may have to risk personal harm to protect them as some German teachers did under the Hitler regime, or as teachers in Linden-McKinley High School in Columbus, Ohio had to in 1971 when the police were sent to take control of the school and teachers experienced helpless fear as their black students and colleagues were beaten and humiliated because of public prejudice and official overreaction against singing the *Lift Every Voice and Sing,* an old and beautiful hymn that is sometimes called "The Black National Anthem."[17]

Rigid and overly-legalistic discipline codes can be forerunners of mindless repression, and their widespread adoption in American schools probably has worsened discipline, undermined educational outcomes and undermined public confidence in schools. Though courts often have required schools to adopt codes as a safeguard against prejudice, our experience indicates that more minority students may be out of school because of such codes, because their very rigidity in the hands of fearful administrators prevents the applica-

17. News stories about the incident may be reviewed in the Columbus Dispatch articles for the period from March through May, 1971; however, the true story of the events was not publicized but is available in taped interviews that I have and in the Columbus municipal court records of trials held for Thomas Brown (vice principal from the school); Chris Voyles (guidance counselor); John Farley (first-year teacher); and Charles Ross (Professor from Ohio State University), all of whom were connected with the event.

tion of professional judgment that would benefit the student more than suspension.

Pinnell has listed advantages for codes as part of common school practice:[18]

- The process of developing a code can build a sense of community with agreed-upon norms for everyone in the school.
- If cooperatively developed, a code is more likely to be understood and supported.
- Expectations may be clearly stated so they can be understood and followed.
- School personnel can use written expectations to settle disagreements with parents or students.
- A well-developed, fair code can elicit trust and loyalty from students.
- If a bill of rights is included, the code can become a social contract, not merely a legal form.
- A code can be used to clarify the school's responsibilities to students, thereby ameliorating school causes for problems.

On the other hand, she cites disadvantages typically found in discipline codes:

- An inflexible code does not account for individual personalities or extenuating circumstances.
- If a code is instituted by administrators alone or only through a committee, it may not be supported by those who bear major responsibility for enforcing it.
- A code must be constantly updated so new staff and students feel they have been involved in creating or interpreting it.
- Clearly stating expectations and rights is a difficult process.

18. G. Pinnell, *The Catch 22 of School Discipline Policy Making* (paper delivered to the American Educational Research Association Annual Meeting, 1981). Revised version printed in Theory Into Practice (October 1985).

•Interpreting and using a code requires consensus and consistent effective judgment from staff members.

•A code can lead to emphasis on form rather than substance, adherence to the letter and not the spirit of procedures.

•A code often addresses procedural rather than substantive rights.

•A code seldom addresses staff responsibilities; so makes law appear discriminatory and one-sided.

•If a code becomes a set of explicit and minute rules, staff and students lose any sense of self-directed responsibility.

Less competent practitioners are immobilized by fear itself. They think they are going to get sued, even though the average school person never gets sued and doesn't even know anyone who did. One might observe, somewhat facetiously to be sure, that if an administrator hasn't been fired or sued he or she probably never did anything, but the number of suits and firings even in this litigious age are too small to make the joke meaningful! It may not always be so, particularly if the attacks on basic freedoms continue.

Asking what the law allows seems to be destroying common sense in the way we educate our children. Good educators don't make their decisions based on "what the law will let me do." They act responsibly on behalf of their students, using an abiding sense of justice. In fact, those most concerned with what the law will or will not let them do are often most out of touch with what is required and they most often ignore student rights and mistreat children. According to a study by Robert Van Brock, violent and unruly behavior is most likely to increase in schools in which administrators have come to fear litigation.[19]

Few teachers and principals know what the law requires. The teachers know less than the principals. Even our very ill-informed preservice teachers are now saying they can't do this or that "because of the law." We should not let fear among professionals deprive people of rights; we must help people overcome their fears. Some

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19. Brock, *Coping with Suspensions and the Supreme Court*, Nat'l Ass'n Secondary Sch. Principals' Bull., March 1977 at 69. *See also* G. Gottfredson & D. Daiger, Disruption in Six Hundred Schools (Report number 289) (Center for Social Organization of Schools, Johns Hopkins University 1979). *See also* Gottfredson's testimony before the House Subcommittee on Elementary, Secondary and Vocational Education, January 23, 1984.

administrators have only superficial knowledge not far removed from the level of common gossip about court cases and decisions, and are ignorant about judicial principles and what courts actually require. Others are overly influenced by media coverage which makes it sound as though courts have given students unlimited rights. When responsible government officials make public statements saying that the law has undermined administrative authority, more credence is given to groundless anxieties, creating conditions that foster misbehavior and disruption.

But how can educators best protect themselves against litigation? By running good schools such as those described in the *Handbook for Developing Schools with Good Discipline*[20] and the soon to be published, *Handbook for Developing Public Confidence in Schools*.[21] Rutter described what good schools do in his analysis of high achieving schools in London.[22] The Safe School study,[23] which has been so ill-used in recent governmental exaggerations of the violence in schools, described clearly what safe schools did. The Effective Schools research, while often simplified, describes what an observer finds in schools with unusually high productivity.[24] If one examines the schools selected in the past two years by the federal government as examples of excellence, they more closely fit the model depicted here than the punitive, rigid, elitist model that seems so attractive to the federal government today.[25] Effective, well-disciplined, high-achieving schools usually have most of the following characteristics:

- The staff works together to create a school that surrounds the student in and out of the classroom with environmental pressures, or reminders, that teach self-discipline and achievement.

- The people in the school view it as a place to do valuable, successful and productive work.

- School personnel make their decisions for the benefit of individ-

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20. W. Wayson, Handbook, *supra* note 4.

21. W. Wayson, C. Achilles, G. Pinnell, L. Cunningham, L. Carol & N. Lintz, Handbook for Developing Public Confidence in Schools (Phi Delta Kappa, in process for release, Fall 1985).

22. M. Rutter, B. Maughan, P. Mortimore & J. Ouston, Fifteen Thousand Hours (1979).

23. National Institute of Education, Violent Schools-Safe Schools (The Safe School Report to the Congress, Volume I, 1978).

24. See several articles dealing with the characteristics of effective schools in Educational Leadership, Dec. 1982.

25. We will present evidence of this in a report to Phi Delta Kappa on the effects of the *Excellence Movement on Local Schools* about September, 1985.

ual students as well as the group.

•School personnel emphasize positive and preventive, rather than punitive, practices. Discipline in the school comes neither from rules nor from isolated practices specifically aimed at attaining discipline.

•The staff in the school rarely adopt any practice wholesale, but they adapt all new practices and materials to meet their own needs and styles.

•The principal, usually in coalition with some emergent leaders from the school staff, plays a key role in making the school what it is. (That key role seems to be as true of bad schools as well as good.)

•School personnel have nearly unflagging faith in their students' ability to learn and in their own ability to teach, and they expend unusual energy to make the belief come true.

•Teachers handle most of the routine discipline problems themselves and usually in ways that minimally disrupt instruction.

•These schools have stronger than average and more frequent than usual ties with parents and the community they serve, and their personnel welcome and use critical review from a wide variety of sources in and out of the school.[26]

Effective teachers and principals whom we have interviewed don't ever mention the law as a reason for doing or not doing something except when they are using recent court decisions to inform some recalcitrant staff or board member or someone else who wants to violate students' rights. Less effective educators use the law as an excuse. Many of the statistics used to show that due process has ruined schools are really a gauge of their fears and anxieties. They ought to be dealt with in ways that would help them gain more skills and more confidence. What will our schools become if professionals do not learn that professional practice requires much more than the law ever could?

School people do what they do primarily because they do not know what else to do. Some paddle; some suspend; some violate the most

26. L. Wake, A Study to Verify School Characteristics Believed to Improve School Discipline (unpublished M.A. Thesis, The Ohio State University 1983). *See also, supra* note 4, Handbook for Developing Schools with Good Discipline.

essential rights of children. Most schools are well disciplined and most school people are doing their best; but sometimes student rights are violated because hurried or harried professionals don't know or can't think of what else to do. They violate the most essential rights of children for the same reason that doctors bled George Washington or architects insulated schools with asbestos. We can either use governmental sanction to deny or reify professional ignorance or we can use it to promote improved service to citizens.

Due process is a way of life in such schools. Due process permeates interpersonal relationships and is based upon trust in one another and in rational processes. Officials sincerely presume that people at least *think* they have good reason for acting the way they do. Due process in these schools permits making human mistakes. Everyone is assumed innocent until proven guilty. Due process is seen as the best preventative for serious misbehavior. Cold and inflexible legalistic policies could harm the educational process in these schools; consequently, federal, state and local district policies should adhere to the spirit of due process as a pervasive principle of interpersonal relations and as an essential method for teaching responsible citizens.[27]

We can close this chapter in no better way than to quote one of the documents issued during the bitter struggle to establish free public schools serving all of America's children. No more powerful argument exists today for improving the quality of education without compromising free universal education, and no modern treatise would reveal better why due process is essential in the educational program:

> The original element of despotism is a monopoly of talent, which consigns the multitude to comparative ignorance, and secures the balance of knowledge on the side of the rich and the rulers. If then the healthy existence of a free government be . . . rooted in the will of the American people, it follows as a necessary consequence, of a government based upon that will, that this monopoly should be broken up, and that the means of equal knowledge (the only security for equal liberty) should be rendered, by legal provision, the common property of all classes.
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> In a republic, the people constitute the government, and by wielding its power in accordance with the dictates, either of their intelli-

27. J. First & H. Mizell, Everybody's Business: A Book About School Discipline (Southeastern Public Education Program, American Friends Service Committee 1980).

gence or their ignorance, of their judgment or their caprices, are the makers and the rulers of their own good or evil destiny. They frame the laws and create the institutions that promote their happiness or produce their destruction. If they be wise and intelligent, no laws but what are just and equal will receive their approbation, or be sustained by their suffrages. If they be ignorant and capricious, they will be deceived by mistaken or designing rulers, into the support of laws that are unequal or unjust.

It appears, therefore, to the committee that there can be no real liberty without a wide diffusion of real intelligence; that the members of a republic should all be alike instructed in the nature and character of their equal rights and duties, as human beings, and as citizens; and that education, instead of being limited as in our public poor schools, to a simple acquaintance with words and cyphers, should tend, as far as possible, to the production of a just disposition, virtuous habits, and a rational self-governing character.[28]

28. *Report of the Workingman's Committee of Philadelphia*, from the Working Man's Advocate, New York City, March 6, 1830.